

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THERESA MARIE SIMEONE, Personal
 Representative of the Estate of Albert Francis
 Simeone, Jr., Deceased, and THERESA MARIE
 SIMEONE, In Her Own Right, and
 MARY ANN LENGYEL, Personal
 Representative of the Estate of George Lengyel,
 Deceased, and MARY ANN LENGYEL,
 In Her Own Right,

 Plaintiffs,

 v.

 BOMBARDIER-ROTAX GmbH, et al.

 Defendants.

PLAINTIFFS' MOTION TO AWARD DELAY DAMAGES PURSUANT TO PA. R. CIV. P. 238

Plaintiffs, by and through undersigned counsel, hereby move this Honorable Court to enter an Order awarding delay damages pursuant to Pa. R. Civ. P. 238 and, in support thereof, state as follows:

1. Pa. R. Civ. P. 238 (a) states that
 - (2) Damages for delay shall be awarded for the period of time from a date one year after the date original process was first served in the action up to the date of the award, verdict or decision.
 - (3) Damages for delay shall be calculated at the rate equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus one percent, not compounded.

2. Rule 238 is applicable to diversity actions in federal court. *Bullins v. City of Philadelphia*, 516 F. Supp. 728 (E.D. Pa. 1981).

3. Service of Process was first made in this action on September 5, 2002.
[See Return of Service attached hereto as Exhibit "A"]

4. On October 21, 2005, the jury awarded the Lengyel Plaintiffs damages totaling \$1,425,000.00. [See Civil Judgment attached as Exhibit "B"]

5. On October 21, 2005, the jury awarded the Simeone Plaintiffs damages totaling \$550,000.00. [See Civil Judgment attached as Exhibit "B"]

6. The prime rate for 2003 was 4 $\frac{1}{4}$ %. [See Addendum to Rule 238 attached hereto as Exhibit "C"]

7. For the period September 5, 2003 through December 31, 2003, the applicable interest rate for calculating delay damages is 5 $\frac{1}{4}$ %.

8. The prime rate for 2004 was 4%. [See Addendum to Rule 238 attached hereto as Exhibit "C"]

9. For the period January 1, 2004 through December 31, 2004, the applicable interest rate for calculating delay damages is 5%.

10. The prime rate for 2005 was 5 $\frac{1}{4}$ %. [See Addendum to Rule 238 attached hereto as Exhibit "C"]

11. For the period January 1, 2005 through October 21, 2005, the applicable interest rate for calculating delay damages is 6 $\frac{1}{4}$ %.

12. Defendant made no written offer of settlement.

13. Plaintiffs caused no delay in the trial of this matter.

14. The Lengyel Plaintiffs are entitled to delay damages in the amount of \$160,975.12.

15. The Simeone Plaintiffs are entitled to delay damages in the amount of \$62,130.74.

WHEREFORE, Plaintiffs respectfully request that the Court mold the verdict to include delay damages as set forth above.

Respectfully submitted,

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